IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 5TH OCTOBER 2006 / 13TH ASWINA 1928

MFA.No. 370 of 1997()

OP(MV.816/1992 of M.A.C.T.,ERNAKULAM

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APPELLANT:

NATIONAL INSURANCE COMPANY LIMITED, REPRESENTED BY THE ASSISTANT MANAGER, REGIONAL OFFICE, KOCHI.

BY ADV. SRI.RAJAN P.KALLYATH

RESPONDENTS:

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1. GEETHA BAI, W/O.G.RAJAN, C.C.16/445, KAZHUTHUMUTTU, KOCHI-5.

2. V.JOSE, VALIAVEETTIL HOUSE, PALACE AVENUE, CHERANELLUR VILLAGE, CHITTOOR.

3. M.K.GOKULAN, S/O.KRISHNAN, KUNNATHURMEL VEETTIL, KUMBALAM P.O., MARADU VIA, ERNAKULAM.

4. V.K.HARIHARAN, S/O.KUNJUKUTTAN, VALIYATHARAPARAMBIL, VADUTHALA, COCHIN-23.

5. JOY, S/O.VARGHESE, POZHAMMOLATH HOUSE, VADUTHALA, KOCHI-23.

6. M.K.PRABHAKARAN, PUNCHAYIL HOUSE, EDATHARA POST.

BY ADV. SRI.ANIL S.RAJ
SRI.ABRAHAM K.JOHN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 05/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Thottathil B. Radhakrishnan, J.

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M.F.A.No.370 of 1997

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Dated this the 5th day of October, 2006.

JUDGMENT

The insurer to a vehicle, which was involved in the accident that led to O.P.(MV)No.816 of 1992 before the Motor Accidents Claims Tribunal, Ernakulam, is the appellant.

2. The claimant sued two persons initially. Later on, the registered owner of the vehicle, who is the fourth respondent in this appeal and the fifth respondent Sri.Joy were impleaded. The appellant insurer filed written statement contending that the policy conditions were violated. The fact remained that it could not trace out even the particulars relating to the insurance because the insured owner was not included in the array of parties before the Tribunal. Being aggrieved by the direction to satisfy the award of compensation, the insurer has filed this appeal, raising three contentions. Firstly, it is urged that the policy had not taken effect since the

cheque issued by the owner of the vehicle towards the policy premium had bounced. Secondly, it is urged that even if the first contention does not hold good, the insurer is entitled to reimbursement from the insured, as also the registered owner. Thirdly, the quantum of compensation fixed is excessive.

3. Dealing with the third among the contentions, the same is only to be repelled because it is apparent that the insurer did not obtain leave under Section 170 of the Motor Vehicles Act, 1988 to contest on all grounds available to the insured. The first among the contentions regarding the liability of the insurer to satisfy the award in favour of the third party stands concluded against the insurer by the decision of the Full Bench in **Oriental Insurance Co.Ltd. v. Sivankutty (2005 (4) K.L.T. 108**). Therefore the same is repelled.

4. On to the question whether the appellant insurer is entitled to reimbursement, the insurer has searched out and impleaded the sixth respondent in this appeal as the insured owner of the vehicle at the time

of the accident. Sri.V.K.Hariharan, the fourth respondent in this appeal is the registered owner. Both of them have been served notice of this appeal and they are not contesting. Obviously they have nothing to state in opposition to the claim of the insurer for reimbursement. Going by the ratio of the decision of the Full Bench of this Court in **Sivankutty's case (supra**) the insurer is entitled to reimbursement from the insured. It is also entitled to reimbursement from the registered owner, going by the decision of the Apex Court in **Jose v. Chacko (2001 (3) K.L.T. 633)**.

In the result, the impugned award is modified directing that the insurer, upon satisfying the impugned award, will be entitled to reimbursement from respondents 4 and 5 in this appeal in execution of the impugned award, as modified by the appellate award. No costs.

Thottathil B.Radhakrishnan,
Judge.

sl.

Thottathil B. Radhakrishnan, J.

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M.F.A.No.370 of 1997

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JUDGMENT

Dated:370/1997